

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4485 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

N. S. CHARAN

Versus

ASSTT. DIRECTOR OF AGRICULTURE

Appearance:

MR SV PARMAR for Petitioner
NOTICE SERVED for Respondent No. 1
Ms. B.R. Gajjar, GOVT PLEADER for Respondent No. 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 02/05/2000

ORAL JUDGEMENT

Present writ petition has been filed by Mr. N.S.
Charan for quashing and setting aside the order of
termination of the petitioner from service. The

petitioner joined the service in the post of Jr. Clerk and according to the conditions of service the petitioner is to pass the Pre Service Training Examination. According to the Government Circular a Government employee gets 4 (four) chances to pass the Pre service training examination. The petitioner failed in all the 4 (four) attempts, and consequently the petitioner was dismissed from service by order dated 2-6-1990 (Anneuxre-F). Having felt aggrieved by the order, the petitioner has filed the present writ petition for quashing the order of dismissal of the petitioner from service.

2. This Court issued interim order on 5-7-1990, directing the respondent Government to reinstate the petitioner in service. From the interim order it appears that in exceptional cases the Government can grant two more chances to a Government employee to pass the departmental examination. The petitioner applied to the authority for granting him one more chance to appear in the Pre Service Training Examination. When the application of the petitioner was pending before the authority the services of the petitioner was terminated without waiting for the decision on the prayer of the petitioner.

3. Learned counsel for the petitioner Mr. S.V. Parmar submitted that the petitioner belongs to Charan community, which is a socially and educationally backward class. Learned counsel submitted that, according to the Government circular, two more chances are generally given to the candidates belong to SC/ST and SEBC. In the instant case the petitioner belongs to SEBC and therefore the authority should have waited for the decision of his representation to clear the same at the 5th attempt. Learned counsel consequently submitted that the Appointing Authority has committed an error in dismissing the petitioner from service without waiting for the decision on the prayer to allow him to appear on the 5th attempt and clear the Pre Service Training Examination. Learned counsel for the petitioner further submitted that in pursuance of the interim order dated 5-7-1990 the petitioner has been reinstated in service and he is still continuing in service. The only thing that is required now is to make the rule absolute issued by this Court. Learned counsel also submitted that in the meantime the petitioner has cleared the Pre Service Training Examination, and therefore, there is no hinderance at present to make the rule absolute. Learned counsel for the petitioner further submitted that, in the interim order it has been stated that the period between the date

of termination and the date of reinstatement will be decided at the time of final hearing of the petition. Learned counsel further submitted that since the petitioner has been dismissed from service without waiting for the decision on his application for appearing on 5th time to clear the examination, the petitioner should be given full pay and allowance during the intervening period of his dismissal and reinstatement.

4. It appears that the petitioner was dismissed from service by an order dated 2-6-90 and the interim order by which reinstatement order has been passed by this Court is on 5-7-1990. So the period between the date of dismissal and the date of joining may not exceed more than 45 days. Since the petitioner has passed Pre Service Training Examination, I am of the view that his reinstatement and continuance in service as per the interim order should be made absolute. However regarding the intervening period, I am of the view that since the petitioner has not worked his pay and allowance should be restricted to 50 % of his total salary. The intervening period shall however be treated as regular service for all other purposes. With the aforesaid observations and directions this writ petition is allowed. Rule is made absolute to the aforesaid extent. However I make no order as to costs.

Dt: 2-5-2000

(P.K. Sarkar, J)

/vgn